

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JASON ESTRADA SERNA,

Defendant-Appellee.

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UNPUBLISHED

August 10, 1999

No. 215684

Oakland Circuit Court

LC No. 98-162139 FH

Before: Sawyer, P.J., and Holbrook, Jr., and W. E. Collette,\* JJ.

MEMORANDUM.

Plaintiff appeals as of right the trial court's order granting defendant's motion to quash the information charging defendant with intentional discharge of a firearm at a dwelling, MCL 750.234b; MSA 28.431(2). We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff argues that the trial court erred by granting the motion to quash, and dismissing the case. We agree. "In reviewing a district court's decision to bind over an accused, a circuit court may not substitute its judgment for that of the district court. The circuit court may only reverse . . . if it appears on the record that there was an abuse of discretion." *People v Flowers*, 191 Mich App 169, 174; 477 NW2d 473 (1991). "Similarly, this Court reviews the circuit court's decision de novo to determine whether the district court abused its discretion." *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997).

In order to prove that a defendant is guilty of this crime, the prosecution must prove that the defendant intentionally discharged a firearm at a facility, and that the defendant knew or had reason to know when he discharged the firearm that the facility was a dwelling. MCL 750.234b; MSA 28.431(2); CJ2d 11.26a. We conclude that at the preliminary examination, the prosecution produced sufficient evidence for purposes of the preliminary examination. MCL 766.13; MSA 28.931; MCR 6.110(E). Defendant admits that he intentionally discharged a shotgun while standing in a yard adjacent to the rear of complainant's home. Although defendant stated that he discharged the weapon only at the

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\* Circuit judge, sitting on the Court of Appeals by assignment.

ground, the undisputed evidence showed that a broken window and seventy-five to eighty small holes were found in the rear of complainant's home. This evidence, coupled with the discovery of pellets inside complainant's home, supports an inference that defendant discharged the weapon at the home. *People v Wilson*, 230 Mich App 590, 592; 585 NW2d 24 (1998). The evidence that defendant was standing in a yard in a residential area supports an inference that he knew or had reason to know that he discharged the firearm at a dwelling.

Therefore, we reverse the trial court's order granting the motion to quash and dismissing the case. We remand for reinstatement of the charge of intentional discharge of a firearm at a dwelling. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Donald E. Holbrook, Jr.

/s/ William E. Collette